IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.547 of 2007

Date of decision : 23.11.2007

Kura Ram

… Appellant

Versus

Haryana Financial Corporation, through District Manager, Kaithal.

…Respondents

Present : Mr.N.S.Shekhawat, Advocate for the appellant.

Vinod K.Sharma, J. (Oral)

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff-appellant for permanent injunction has been ordered to be dismissed.

The plaintiff filed a suit claiming injunction against the Haryana Financial Corporation for recovery of any amount due against M/s Sunder Agricultural Implements Pabnawa either by detaining the plaintiff in imprisonment or by any other mode.

The plaintiff-appellant claimed that he is an agriculturist and has not applied for any loan to the defendant-respondents. It is case of the plaintiff-appellant that a notice was issued by the Assistant Collector for recovery of Rs.20,000/- alongwith interest from the plaintiff-appellant on the plea that the loan was advanced to the plaintiff-appellant for a laith machine.

The suit was contested. It was pleaded by the defendant-respondents that earlier a civil suit No.216 of 1989 was filed by the plaintiff-

appellant. In that suit, a written statement was filed by the defendant-respondents claiming that the plaintiff was not original borrower, but was a guarantor for the repayment of loan advanced to M/s Sunder Agricultural Implements Pabnawa. The said suit was dismissed in default. The application moved for setting aside ex parte dismissal of the suit was also dismissed. The appellant preferred an appeal against the said order. The appeal stood withdrawn.

The learned Courts below have been pleased to hold that present suit was barred under Order 9 Rule 9 of the Code of Civil Procedure, as the plaintiff-appellant was not competent to file a fresh suit on the same cause of action after having moved an application for getting the suit restored, which was also dismissed in default. It has also been observed that the jurisdiction of the Civil Court to entertain and try the suit against the issuance of recovery certificate under the Haryana Public Money (Recovery and Dues) Act 1979 is specifically barred and therefore, the suit filed by the plaintiff-appellant was prima facie not competent.

Learned counsel appearing on behalf of the appellant submits that the following substantial questions of law arise for consideration in this appeal:-

i) Whether the impugned judgments, which are based on misreading of evidence, are sustainable in the eyes of law?

ii) If the earlier suit has been dismissed in default, whether subsequent suit for injunction would still be maintainable?

Nothing has been pointed out, as to how impugned order suffers from misreading of evidence. The copy of the earlier suit and order passed thereon, were duly exhibited and therefore, the findings recorded by

the learned Courts below are based on appreciation of evidence which cannot be said to be misreading of evidence. Therefore, the first question is answered against the appellant.

The second question of law is also answered against the appellant as under Order 9 Rule 9 of the Code of Civil Procedure, plaintiff is proceeded from bringing a fresh suit in respect of same cause of action.

It may further be noticed that once the jurisdiction of the Civil Court was barred, the courts below were right in dismissing the suit filed by the plaintiff-appellant.

No substantial question of law arises for consideration in this appeal.

Dismissed.

[**Vinod K.Sharma**]

Judge

23.11.2007

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